



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

CRS
Docket No: 6207-99
7 October 1999

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C. 1552

Encl: (1) Case Summary

1. Pursuant to the provisions of reference (a), Petitioner, the son of a former enlisted member of the United States Navy, has requested that Subject's naval record be corrected by removing the mark of desertion and showing that he died on 11 December 1972.

2. The Board, consisting of Mr. Morgan, Mr. Hogue, and Ms. Taylor, reviewed Petitioner's allegations of error and injustice on 6 October 1999 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosure and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. This case was originally considered and denied by the Board on 6 April 1988. Reconsideration was granted based on a letter of 21 September 1999 from Petitioner, who has now submitted new and material evidence not available at the time of the Board's initial review.

c. The Board did not obtain the service record for this review of Subject's case. However, the necessary records are contained in the Board's file of the previous review of Subject's case.

d. Subject reenlisted in the Navy on 19 February 1970 after more than six years of prior active duty. The record reflects that he served without disciplinary infractions.

e. On 14 December 1972 Subject was placed in an unauthorized absence status when he failed to return to the ship after a party on the night of 11 December 1972. About thirty days later, on 15 January 1973, he was declared a deserter in accordance with Navy regulations. No one has seen or heard from him since his disappearance.

f. On 4 June 1999 the Identification Section of the New York City Police Department stated that Subject's fingerprints matched those of a body which was found in the Hudson River on 13 March 1973. On 16 September 1999 an Armed Forces Medical Examiner noted the circumstances surrounding the recovery of Subject's body and opined that "the condition of the remains of (Subject) are consistent with his death occurring shortly after his disappearance."

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. Since Subject appears to have died on or about the day he was last seen, 11 December 1972, the Board concludes that he never intended to become an unauthorized absentee or desert. Accordingly, the mark of desertion should be expunged from the record. The Board also believes that the evidence now shows that Subject probably met with foul play on or about 11 December 1972 and died at this time. In the absence of any evidence to the contrary, the Board concludes that Subject's record should show that he died on 11 December 1972.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Subject's naval record be corrected by removing all material which refers to Subject as a deserter.

b. The Subject's naval record be further corrected to show that he died on 11 December 1972.

c. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

d. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's record.

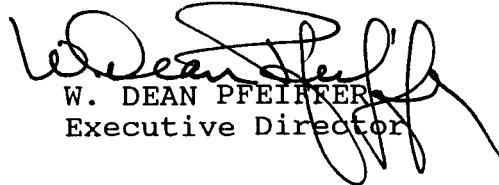
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director